

Memorandum

To: MARK LEJA
Chief, Division of Construction

Date: July 2, 2009
File No.: P2200-0422
Contract No.: 03-0A4104

Attention: MICHAEL KISSEL
Chief, Office of Contract Administration

From: **DEPARTMENT OF TRANSPORTATION**
Audits and Investigations

Subject: Special Audit Request – Nehemiah Construction, Inc. Home and Field Office Overhead Claim

We completed an audit of costs claimed for Contract No. 03-0A4104 between the Department of Transportation (Department) and Nehemiah Construction, Inc. (Contractor). The Contractor claimed \$1,285,712.52 of overhead costs for Time Related Overhead (TRO) in accordance with the Code of Federal Regulations (CFR) 48, Chapter 1 Part 31, the Department Standard Specifications and the contract provisions. The Contractor submitted four audit reports by their independent Certified Public Accountant (CPA) to support the overhead amounts claimed. The claimed costs are the responsibility of the Contractor's management and our responsibility, based on our audit, is to express an opinion regarding those costs.

Our audit was conducted in accordance with the Performance Standards set forth in the Government Auditing Standards issued by the Comptroller General of the United States of America. These standards require that we plan and perform the audit to obtain reasonable assurance that the data and records reviewed are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and the records reviewed. It also includes assessing the accounting principles and significant estimates made by the Contractor's management, as well as evaluating the overall presentation. We believe that our audit provides a reasonable basis for our opinion.

The scope of the audit was limited to financial and compliance activities related to Contract No. 03-0A4104 and the allowability of the proposed claim in accordance with the requirements set forth by the Department Standard Specifications, Contract Special Provisions and Code of Federal Regulations (CFR) 48, Chapter 1, Part 31. The audit consisted of an evaluation of the independent CPA audit and the Contractor's job cost records for costs claimed and test of transactions supporting amounts claimed by the Contractor during the period of March 5, 2007 through June 30, 2008. Transactions arising subsequent to June 30, 2008, were not tested and, accordingly, we do not express an opinion on costs or credits arising after this date.

Our audit included such tests as we considered necessary to achieve the following objective:

- To determine if the costs claimed are supported and reflects costs allowable under the Code of Federal Regulations (CFR) 48, Chapter 1, Part 31.
- To determine if the costs claimed meet the criteria in the Contract Special Provisions.
- To determine if the costs claimed are in compliance with the Department Standard Specifications.

AUDIT RESULTS

In our opinion, the Contractor has not fully supported the costs claimed in the amount of \$1,285,712.52 related to the claim items requested by the District. Based on our audit of the Contractor's project cost records, the independent CPA audit reports, and interviews with the Contractor's CPA personnel and Department construction personnel, we determined the total amount of \$1,285,712.52 requires additional analysis by the Resident Engineer to establish merit and entitlement (Exhibit A, B, C and D). The following exception was noted:

Finding 1

The Contractor has claimed \$1,285,712.52 for TRO, based on their TRO rate of \$6,800.00. TRO is the overhead bid item which covers home office overhead (HOO) and field office overhead (FOO) costs. Section 10-1.17 of the Contract Special Provisions allow for an adjustment of the original TRO rate if the number of work days authorized exceeds the original number of work days for the contract by 149 percent. Based on our analysis, we have determined the Contractor's rate of \$6,800.00 is overstated. We calculated an audited TRO rate of \$3,786.12 (\$1,383.20 in HOO and \$2,402.92 in FOO) in compliance with Department Standard Specifications, Contract Special Provisions Sections 5-1.12 and 10-1.17 and 48 CFR Part 31.

Recommendation: We recommend the Department use the audited TRO daily rate of \$3,786.12 for the adjustment to TRO.

Response: The Contractor responded on June 25, 2009 that they are in disagreement on the working days versus the TRO days and is currently communicating with the Construction Department to resolve this manner.

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The audit results and findings were discussed with Lynnette Spadorio, District Area Manager; and Brian Syftestad, Field Coordinator, Division of Construction on June 11, 2009 and they concurred.

This report is intended for the information of the Department's management, the Federal Highway Administration, and the Contractor. However, this report is a matter of public record and its distribution is not limited.

If you have any questions concerning the audit, please contact Lynn Carrier at (916) 323-7928

ORINGINAL SIGNED BY

LYNN CARRIER
Auditor

Approved:

ORINGINAL SIGNED BY

CARLOS M. AGUILA
Audit Manager

Attachments

c: LSpadorcio, District 3 Area Manager
BPetersen, Project Engineer
BSyftestad, Northern Region/District 4 Coordinator
LCarrier, Audits and Investigations
Audit File
Chron File

EXHIBIT A - SUMMARY OF FINDINGS**P2200-0422****03-0A4104****Nehemiah Construction, Inc.**

SUMMARY OF AMOUNTS AUDITED

Description	CPA Report of Costs Claimed	Disallowed Costs	Supported Costs	District Analysis	Notes
TRO HOO	\$485,539.52			\$ 460,606.18	Exhibit C
TRO FOO	\$800,173.00			800,173.00	Exhibit D
	<u>\$1,285,712.52</u>	<u>\$0.00</u>	<u>-</u>	<u>\$1,260,779.18</u>	

Exhibit B – TRO ANALYSIS CALCULATION
P2200-0422
Contract No: 03-0A4104
Nehemiah Construction, Inc.

REQUEST FOR TRO ADJUSTMENT

The Contractor has requested payment in the amount of \$1,285,712.52. This amount consists of \$485,539.52 (\$2,596,468.00-home office overhead costs claimed in CPA reports multiplied by 18.70% revenue that Contract 03-OA4104 generated during life of contract.) added to \$800,173.00 field office overhead costs claim in CPA reports. The contract item price for TRO is \$6,800.00. The four independent CPA reports did not contain a requested TRO rate.

Section 10-1.17 of the Contract Special Provisions allow for an adjustment of the original TRO rate if the number of work days authorized exceeds the original number of work days for the contract by 149 percent. This contract meets this criterion.

Based on our analysis, the Contractor's TRO rate of \$6,800.00 is overstated. We have calculated a revised TRO rate of \$3,786.12 (\$1,383.20 in HOO and \$2,402.92 in FOO) in compliance with the Contract Special Provisions Sections 5-1.12 and 10-1.17, and 48 CFR Part 31.

Calculated HOO Per Caltrans
Calculated FOO Per Caltrans

\$1,383.20 (Exhibit C)
\$2,402.92 (Exhibit D)
\$3,786.12

EXHIBIT C - SUMMARY OF FINDINGS
P2200-0422
CONTRACT 03-0A4104
NEHEMIAH CONSTRUCTION, INC.

SUMMARY OF AUDIT				
Description	Per CPA Audit	Caltrans Disallowed	Allowed	Notes
<i>Home Office Overhead</i>				
Officer's Salaries	\$ 236,352.00		\$ 236,352.00	
Office Salaries	\$ 932,572.00		\$ 932,572.00	
Admin Labor Burden	\$ 77,909.00		\$ 77,909.00	
Bonuses	\$ 761,150.00	\$ 133,333.35	\$ 627,816.65	A
Employee benefits	\$ 3,017.00		\$ 3,017.00	
Profit Sharing/401K	\$ 47,269.00		\$ 47,269.00	
Insurance	\$ 263,867.00		\$ 263,867.00	
Professional Fees	\$ 27,806.00		\$ 27,806.00	
Office Supplies	\$ 34,129.00		\$ 34,129.00	
Safety & Trng	\$ 10,339.00		\$ 10,339.00	
Postage	\$ 7,429.00		\$ 7,429.00	
Rent	\$ 54,592.00		\$ 54,592.00	
Repairs	\$ 12,389.00		\$ 12,389.00	
Depreciation	\$ 46,354.00		\$ 46,354.00	
Computer Expenses	\$ 11,891.00		\$ 11,891.00	
Telephone	\$ 25,029.00		\$ 25,029.00	
Utilities	\$ 3,801.00		\$ 3,801.00	
Taxes/licenses	\$ 15,200.00		\$ 15,200.00	
Bank fees	\$ 11,193.00		\$ 11,193.00	
Dues/Subscriptions	\$ 3,881.00		\$ 3,881.00	
Bidding	\$ 8,234.00		\$ 8,234.00	
Other	\$ 2,065.00		\$ 2,065.00	
Home Office Overhead Totals	\$ 2,596,468.00	\$ 133,333.35	\$ 2,463,134.65	

Notes

- A.** The Contractor's home office overhead claim includes bonus costs for the months of Oct. 2007-Jan. 2008 that was covered in first CPA audit report dated Feb. 5, 2008. Since the costs for those months have already been allocated, we are disallowing the costs which were also included in the second CPA audit report dated Dec. 9, 2008.

	Claimed Amount	Caltrans Audit Adjustments	Allowable
Home Office Overhead	\$ 2,596,468.00	\$ 133,333.35	\$ 2,463,134.65

Calculation of Revenues

Contract 03-0A4104	Per CPA Audit	\$ 6,689,152.38
Total Company Revenue	Per CPA Audit	÷ \$ 35,781,314.36
		<u><u>0.186945407</u></u>

Allocable HOO for Contract (\$2,463,135 X 18.70%)	\$ 460,606.18
Total Work Days	÷ 333
Work Day Daily Rate	\$ 1,383.20

- B.** The total number of work days is calculated from the first day construction began (03/05/07) to the last day work accepted by Division of Construction.

EXHIBIT D - SUMMARY OF FINDINGS
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CONTRACT 03-0A4104
NEHEMIAH CONSTRUCTION, INC.

Nehemiah Construction, Inc. claimed a work day daily rate of \$6,800.00 for Field Office Overhead (FOO) component of the TRO claim, which is overstated. We determined that Nehemiah Construction, Inc. can support a work day daily rate of \$2,402.92.

Description	Per CPA Audit	Calrans Disallowed	Allowed	Notes
<i>Field Office Overhead</i>				
Job Superintendent	\$ 152,390.00		\$ 152,390.00	
Project Manager	\$ 189,163.00		\$ 189,163.00	
Field Engineer	\$ 50,359.00		\$ 50,359.00	
General Superint	\$ 10,976.00		\$ 10,976.00	
Other Labor	\$ 33,154.00		\$ 33,154.00	
Burden	\$ 32,557.00		\$ 32,557.00	
Workers Comp	\$ 136,631.00		\$ 136,631.00	
FO trailer rent	\$ 43,071.00		\$ 43,071.00	
Utilities	\$ 35,310.00		\$ 35,310.00	
FO office supplies	\$ 9,726.00		\$ 9,726.00	
Safety	\$ 21,697.00		\$ 21,697.00	
Maintenance/fuel	\$ 53,797.00		\$ 53,797.00	
Other project exp	\$ 31,342.00		\$ 31,342.00	
Field Office Overhead Totals	\$ 800,173.00	-	\$ 800,173.00	
Number of work days (3/05/07 to 6/30/08)	333		333	
FOO work day daily rate	\$ 2,402.92		\$ 2,402.92	

Notes

All costs that were disallowed by CPA were not listed in CPA audit report.